IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08/07/2003

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THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

CRL. APPEAL NO.1119 OF 2002

Thangaraj .. Appellant

-Vs-

The Inspector of Police
Tiruppur North Police Station
Tiruppur .. Respondent

This criminal appeal is preferred under Section 374 of Cr.P.C. against the judgment of the learned Additional District-cum-Sessions Judge (Fast Track Court No.4), Coimbatore at Tiruppur in S.C.No.318 of 200 2 dated 23.05.2002.

!For Appellant : Mr.S.Kolandaisamy
Amicus Curiae

^For Respondent : Mr.V.Jaya Prakash Narayan
Govt. Advocate(Crl. Side)

:JUDGMENT

No representation for the appellant when the matter was called. Hence, Mr.S.Kolandaisamy, Advocate is appointed as Amicus Curiae.
2. The sole appellant/accused in a sessions trial, who stood charged, tried and convicted under Section 392 r/w 397 I.P.C. and sentenced to undergo R.I. For eight years along with a fine of Rs.5000/-, in default, to undergo R.I. for one year, has brought forth this appeal.
3. The short facts necessary for the disposal of this appeal can be stated as follows:
P.W.1 Moorthy along with his friend P.W.3 Sakthi was walking in a bridge near Tip Top Hotel at about 9.15 a.m. on 28.4.2000. The accused/appellant suddenly waylaid them. At knife point, the accused snatched M.O.1 HMT Watch and M.O.2 cash Rs.230/- from P.W.1. When the same was resisted, the appellant attacked him with M.O.3 knife and caused injuries to P.w.1 on right hand wrist. The appellant fled away from the scene of occurrence. Immediately, P.Ws.1 and 3 rushed to Thirupur North Police Station and lodged a complaint under Ex.P.1. On the strength of Ex.P.1, P.w.6, Sub Inspector of Police registered a case in Crime No.522 of 2000 under Section 392 I.P.C. The Express F.I.R. Ex.P.7 was sent to concerned Court. P.W.6

recovered M.O.4 shirt of P.W.1 under Ex.P.3 mahazar. P.W.7, Inspector of Police took up investigation, proceeded to the site of occurrence and prepared Ex.P.4 observation mahazar and Ex.P.8 Rough sketch. On information, the Investigating Officer proceeded to Sikkanna Arts College, where the accused was arrested on the same day and he was identified by P.w.1. The accused was volunteered to give a confessional statement. Pursuant to his confessional statement, M.O.1 Watch, M.O.2 cash Rs.230/- and M.O.3 knife, which was used by the accused at the time of occurrence were recovered from the accused under Ex.P.6 mahazar in the presence of P.W.5, P.W.1 and one Abbas. The M.Os were sent to the concerned Court, while the accused was remanded to judicial custody. On 30.6.2000 P.W.7 examined P.W.2 Doctor Selvanayagi, who gave treatment to P.W.1 and obtained wound certificate Ex.P.2. On completion of the investigation, P.w.7 filed a charge sheet against the accused under Section 392 r/w 397 I.P.C.

4. In order to prove the charges levelled against the accused, the prosecution examined 7 witnesses and marked 8 witnesses and 4 M.Os. After the evidence of the prosecution was over, the appellant/accused was questioned under Section 313 of Cr.P.c. as to the incriminating circumstances found in the evidence of the prosecution witnesses. The accused flatly denied the same as false. No defence witnesses were examined. After careful consideration of the rival submissions and the scrutiny of the materials available, the trial court found the accused guilty under Section 392 r/w 397 I.P.C. and sentenced him to undergo imprisonment as referred to above.

5. Arguing for the appellant, the learned counsel inter-alia would submit that according to the prosecution case, P.Ws.1 and 3 were eyewitnesses; that from the evidence of P.W.3 it would be clear that he went aside to answer the call of nature and he came only after the occurrence was over; that he could not have seen the occurrence; that P.w.3 was the friend of P.W.1 and thus, he was the interested testimony; that P.W.1's evidence is an uncorroborated testimony; that there are number of contradictions between the evidence of P.Ws.1 and 3; that the lower court should not have relied on the evidence of P.Ws.1 and 3; that P.Ws.1 and 3 could not have identified M.O.3, knife, which was used by the accused at the time of occurrence; that the lower court has relied on the confessional statement given by the accused in order to create the nexus between the accused and the crime in question; that the prosecution did not prove its case beyond reasonable doubt; that the lower court has given undue weight and importance to rely on the evidence of P.W.1 and the confessional statement alleged to have been given by the accused, which were not properly proved by the prosecution as expected in law, and hence, the judgment of the lower court has got to be set aside.

6. Opposing to the contentions put forth by the appellant's side, the learned Government Advocate would submit that P.W.1 is the owner of the properties, which were marked as M.Os.1 and 2; that he has clearly deposed before the Court that it was the accused/appellant who waylaid them and snatched the properties from him; that a case was registered shortly within 45 minutes from the time of occurrence; that investigation was taken up and the accused was arrested on the very day at about 2.00 p.m.; that when the accused volunteered to give a confessional statement, the same was recorded in the presence of the witnesses, P.W.5, an independent witness and the other witness; that P.W.5 has been examined as to the arrest and the confessional statement given by the accused; that pursuant to the confessional statement,

M.O.1 Watch, M.O.2 cash and M.O.3 knife were recovered from the accused; that it proved the nexus between the accused and the crime in question; that the lower court was perfectly correct in finding the accused guilty and hence, the judgment of the lower court has got to be sustained.

7. After careful consideration of the rival submissions and the scrutiny of the materials available, this Court is unable to notice any merit in this appeal. According to the prosecution, on 28.4.2000 at about 9.15 a.m. when P.W.1 accompanied by P.W.3 was walking in a bridge, they were waylaid by the accused and at knife point, the accused snatched M.O.1 HMT Watch and M.O.2 Cash Rs.230/- from P.W.1. It is pertinent to note at this juncture that the fact that P.W.1 was the owner of M.Os.1 and 2 was not disputed by the appellant/accused at any point of time during trial nor has he claimed the same as his property. P.W.1 has clearly narrated the incident. As rightly pointed out by the learned counsel for the appellant, from the evidence of P.W.3 it would be clear that he came to the place of occurrence a few seconds later and after the occurrence was over, since he went aside to answer the call of nature. However, P.W.1's evidence would be suffice and it is cogent and acceptable, since he has narrated the entire incident.

8. It remains to be stated that on the complaint given by P.W.1, a case was registered within 45 minutes from the time of occurrence and investigation was taken up. The accused was arrested by 2.00 p.m. on the very day within 4 or 5 hours from the time of occurrence. The accused was identified by P.W.1. On the arrest by the investigating Officer, the accused volunteered to give confessional statement in the presence of two witnesses including P.W.5, an independent witness. Pursuant to the confessional statement, the accused produced M.O.1 watch, M.O.2 cash and M.O. 3 knife, which was used by the appellant at the time of occurrence. The recovery of M.Os.1 to 3 pursuant to the confessional statement made by the accused stands good piece of evidence, which would clearly connect the accused with the crime. P.W.1, who sustained simple injury at the time of occurrence, was treated by P.W.2 Doctor Selvanayagi, before whom P.W.1 made a statement as to how he sustained injury. P.W.2, Doctor, has also been examined. Under the stated circumstances, all or any one of the contentions put forth by the appellant's side do not merit acceptance by this Court.

9. It is true that there are minor contradictions in the evidence of P.Ws.1 and 3. The court is of the view that it does not require any consideration at all. P.W.1's evidence as to the narration of the incident coupled with the recovery of M.Os.1 to 3 would clearly prove the nexus between the accused and the crime. Under the stated circumstances, the Court is unable to notice any merit in the appeal. Coming to the question of sentence, the Court is of the view that the sentence awarded by the lower court under Section 392 r/w 397 I.P.C. has got to be reduced to 7 years R.I. which would meet the ends of justice. Therefore, the sentence of 8 years R.I. under Section 392 r/w 397 I.P.C imposed by the lower court on the appellant/accused is reduced to seven years R.I along with fine of Rs.5000/-, in default to undergo R.I. for one year.

10. With the above modification, this criminal appeal is dismissed.

Index : Yes
Internet : Yes
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To
1. The Asst. Sessions Judge, Fast Track Court No.4,
Coimbatore at Tirupur
2. The Asst. Sessions Judge, Fast Track Court No.4,
Coimbatore at Tirupur
through The Principal Sessions Judge, Coimbatore
3. The Superintendent, Central Prison, Coimbatore
4. The Public Prosecutor, High Court, Madras
5. The Dy. Inspector General of Police, Chennai-4
6. Mr.V.Jaya Prakash Narayan, Govt. Advocate(Crl. Side)
High Court, Madras
7. The Inspector of Police, Tiruppur North Police Station
Tiruppur